

1 DAVID T. BIDERMAN, Bar No. 101577
2 JUDITH B. GITTERMAN, Bar No. 115661
3 M. CHRISTOPHER JHANG, Bar No. 211463
4 **PERKINS COIE LLP**
5 Four Embarcadero Center, Suite 2400
6 San Francisco, CA 94111-4131
7 Telephone: (415) 344-7000
8 Facsimile: (415) 344-7050
9 Email: DBiderman@perkinscoie.com
10 Email: JGitterman@perkinscoie.com
11 Email: CJhang@perkinscoie.com

12 Attorneys for Defendant Google Inc.

13 **UNITED STATES DISTRICT COURT**

14 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

15 CLRB HANSON INDUSTRIES, LLC d/b/a
16 INDUSTRIAL PRINTING, and HOWARD
17 STERN, on behalf of themselves and all others
18 similarly situated,

19 Plaintiffs,

20 v.

21 GOOGLE, INC.,

22 Defendants.

CASE NO. C 05-03649 JW

**DEFENDANTS GOOGLE'S
EVIDENTIARY OBJECTIONS TO
DECLARATION OF CLRB HANSON
INDUSTRIES, LLC. AND EXHIBITS
THERE TO**

Fed. R. Civ. P. 56

Date: November 6, 2006

Time: 9:00 a.m.

CTRM 8

Judge: Hon. James W. Ware

23 As set forth below, defendant Google, Inc. hereby objects to and moves to strike the
24 following testimony from the Declaration of CLRB Hanson Industries, LLC ("CLRB Hanson
25 Decl."), submitted by plaintiffs in support of their Motion for Partial Summary Judgment
26 ("Motion").

27 **DEFENDANTS GOOGLE'S EVIDENTIARY**
28 **OBJECTIONS TO DECLARATION OF CLRB HANSON**
INDUSTRIES, LLC. AND EXHIBITS THERETO

Case No. C05-03649 JW

[41063-0023/LA062820 032.TMP]

EVIDENTIARY OBJECTIONS

	<u>Paragraph in Declaration</u>	<u>Objections</u>
2. (2:5-8)	“... What enticed CLRB (and its predecessor, Industrial Printing), to the AdWords program and what CLRB relied on was the fact that Google represented that CLRB would control its costs by setting a daily budget and per click charges, and there was no minimum charge.”	Conclusory, lacks foundation, hearsay, vague and ambiguous. Declarant inconsistently testifies as “CLRB Hanson” and “I” in the declaration. A corporate entity cannot be a declarant.
3. (2:9-12)	“Google also represents that the participant in the AdWords Program can pause its ads and not accrue any charges while its ads are paused. I found that feature extremely beneficial and generally paused CLRB’s AdWords campaigns often in order to control advertising costs and demand for its services.”	Conclusory, lacks foundation, hearsay, vague and ambiguous. Declarant inconsistently testifies as “CLRB Hanson” and “I” in the declaration. A corporate entity cannot be a declarant.
4. (2:13-15)	“When CLRB (and its predecessor, Industrial Printing) enrolled in the AdWords Program, it provided the information required, such as, the name of the ad campaign, email address, billing information, daily budget and costs per click.”	Conclusory, lacks foundation, hearsay, vague and ambiguous. Declarant inconsistently testifies as “CLRB Hanson” and “I” in the declaration. A corporate entity cannot be a declarant.
4. (2:15-18)	“I was not directed to, nor did I, review any of the numerous FAQs (frequently asked questions) that you can access online if you wanted to. I do not recall that I had to accept the FAQs prior to joining the AdWords Program and Google has not produced any evidence to the contrary.”	Conclusory, lacks foundation, hearsay, vague and ambiguous, not relevant. Declarant inconsistently testifies as “CLRB Hanson” and “I” in the declaration. A corporate entity cannot be a declarant.
5. (2:19-20)	“Google states that the: ‘Ad system ensures you never pay more than your daily budget multiplied by the number of days in a month your campaign was active.’ See Exhibit A hereto.”	Lacks foundation; hearsay, not relevant. Brett Hanson testified at deposition that he did not see Exhibit A before his counsel showed it to him during the course of litigation; Exhibit A is not admissible.
5.	“In contrast to the way Google	Conclusory, lacks foundation; hearsay, not

	<u>Paragraph in Declaration</u>	<u>Objections</u>
1 2 3 4 5 6 7 8	(2:22-25) promotes AdWords (as a program that gives the advertiser complete control over its charges), CLRB has been often charged by Google amounts greater than its daily budget. CLRB has also been charged by Google amounts in excess of the amount of its daily budget times the number of days that a campaign was active during the course of a month.”	relevant. Brett Hanson testified at deposition that he did not see Exhibit A before his counsel showed it to him during the course of litigation; Exhibit A is not admissible.
9 10 11 12 13 14 15 16	6. (2:26 – 3:3) “For example, CLRB’s AdWords campaign (contract decorating), ran for twenty-seven days during the month of February 2005. (See Exhibit B, P-0057-60.) During that time the daily budget was set at \$50. (See Exhibit B, P-0057-60, column 4.) It was charged a total of \$1,399.99 during that period. (See Exhibit B, GOOG-HN 21583-21624.) This came out to \$49.99 more than the daily budget, multiplied by the number of days in the month that the campaign was active.”	Conclusory, lacks foundation; hearsay, not relevant. Brett Hanson testified at deposition that he did not see Exhibit A before his counsel showed it to him during the course of litigation; Exhibit A is not admissible. Exhibit B lacks foundation and is inadmissible hearsay.
17 18 19 20 21 22 23 24 25	6. (3:3-8) “In March 2005, the campaign ran for seventeen days with a \$50 daily budget. (See Exhibit B, P-0060-62.) It was charged \$1,063.35. (See Exhibit B, GOOG-HN 21624-21654.) This amounts to \$213.35 more than the daily budget of \$50 times the number of days the campaign was active between March 1 and March 31, 2005. It was given a total of \$177.85 in overdelivery credits for the contract decorating ad campaign March charges. See Exhibit B, GOOG-HN 21624-21654.”	Conclusory, lacks foundation; hearsay, not relevant. Brett Hanson testified at deposition that he did not see Exhibit A before his counsel showed it to him during the course of litigation; Exhibit A is not admissible. Exhibit B lacks foundation and is inadmissible hearsay.
26 27	7. (3:9-12) “While these overcharges may seem small, when you consider the hundreds of thousands of AdWords	Conclusory, speculative, hearsay, no foundation, not relevant. Exhibit B lacks foundation and is inadmissible hearsay.

	<u>Paragraph in Declaration</u>	<u>Objections</u>
	advertisers, the monthly bills to each and all those with daily budgets much higher than CLRB's, the amount of monies Google receives from these overcharges becomes very significant."	
8. (3:13-18)	"When I complained about the overcharges to Google, I was told by Google that it indeed bills more than a daily budget on any given day (up to 120% of the daily budget,) and that Google will charge up to 30 or 31 times a daily budget in a monthly bill. Thus, if my daily budget is \$1,000, Google states it is free to charge up to \$1,200 a day, as long as it doesn't charge more than \$3,000 or \$3,100 in a month. However, that is contrary to how Google advertised and promoted their AdWords Program.	Conclusory, lacks foundation; hearsay.
8. (3:18-20)	If, CLRB had an active campaign for 10 days during a monthly period, I expect to be charged at most, \$10,000, not \$12,000, which Google now states it is free to charge."	Conclusory, speculative, hearsay, no foundation, not relevant.
9. (3:21-23)	"Delivery of ads over and above CLRB's daily budget is not beneficial to it because there is a limit to the amount of responses it can handle. The overdelivery just adds to its costs."	Conclusory, speculative, hearsay, no foundation, not relevant.

10. (3:24-25)	"Google's promotion of its AdWords Program and its billing practices are deceptive and misleading."	Conclusory, speculative, hearsay, no foundation.
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DATED: October 16, 2006.

PERKINS COIE LLP

By _____/S/
David T. Biderman
Attorneys for Defendant Google Inc.